

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

ROMAN V. SELEZNEV,

Defendant.

NO. CR11-0070RAJ

**GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION FOR
SUBSTITUTION OF COUNSEL**

NOTED FOR: December 2, 2016

I. INTRODUCTION

Defense counsel John Henry Browne and Emma Scanlon have moved to withdraw as counsel. This will represent defendant's fifth voluntary change of counsel. This case took over two years to proceed to trial as a result of defendant's repeated changes of counsel, and the Court has already granted one significant sentencing continuance. In the meantime, Mr. Seleznev faces serious federal charges in two other districts. *See United States v. Roman Seleznev*, CR12-004 (D. Nevada); and *United States v. Roman Seleznev*, CR09-491 (N.D Georgia). Both of those cases are on hold while this prosecution remains pending. Because this change of counsel will likely lead to additional delays in this case and further delay the prosecution of the two other pending cases, the government asks the

1 Court to consider denying defendant's latest request for new counsel as inconsistent with
 2 the fair administration of justice.

3 II. DISCUSSION

4 A. Applicable Law

5 The Ninth Circuit has held that when a defendant seeks to fire retained counsel
 6 and seeks new appointed counsel, the Court must allow the substitution "unless a
 7 contrary result is compelled by 'purposes inherent in the fair, efficient, and orderly
 8 administration of justice.'" *See United States v. Rivera-Corona*, 618 F.3d 976, 979 (9th
 9 Cir. 2010) (quoting *United States v. Ensign*, 491 F.3d 1109, 1115 (9th Cir. 2007)). In
 10 *Rivera-Corona*, the Ninth Circuit found the "extent-of-conflict review" typically
 11 conducted when a defendant seeks to replace appointed counsel with new appointed
 12 counsel is inappropriate in such cases. *Id.* at 980-981. In cases like this, the defendant
 13 may fire his retained counsel for any reason or no reason "unless the substitution would
 14 cause significant delay or inefficiency" *Id.* at 979-980. Where substitution would
 15 result in delay, however, defendant may replace existing counsel with retained counsel
 16 only upon a showing of good cause. *See Torres-Rodriguez*, 930 F.3d at 1380 n.2.

17 Therefore, if the Court finds the requested substitution would result in undue
 18 delay, the Court should proceed to inquire as to whether defendant is receiving effective
 19 representation from current counsel. *Id.* This Court has "wide latitude in balancing the
 20 right" to discharge counsel against "the demands of its calendar." *United States v.*
 21 *Gonzalez-Lopez*, 548 U.S. 140, 152 (2006). To determine whether substitution may
 22 result in undue delay, the Court should inquire of substitute counsel regarding counsel's
 23 familiarity with the case, whether counsel intends to seek additional continuances of the
 24 sentencing date, what other client commitments counsel may have that could interfere
 25 with effective preparation for sentencing, and whether current counsel is available to
 26 assist with brining substitute counsel up to speed.

1 **B. Argument**

2 As detailed in numerous previous pleadings, defendant has engaged in a clear
 3 pattern of using changes of counsel to delay these proceedings. Should the Court grant
 4 defendant's latest request for new counsel, the history and complexity of this case
 5 suggests new counsel will likely seek a lengthy continuance of the sentencing date.
 6 Because this case has been pending for over two years and two other federal prosecutions
 7 are on hold while this case proceeds, the Court should not allow yet another change of
 8 counsel and further delay of these proceedings. Nonetheless, should the Court grant
 9 defendant's request for new counsel, the government requests that the Court keep the
 10 current sentencing date.

11 **III. CONCLUSION**

12 For the foregoing reasons, the government respectfully requests defendant's
 13 motion for substitution of counsel be reviewed carefully, and should new counsel be
 14 substituted, that the current sentencing date should remain in place.

15 DATED this 22nd day of November 2016.

16
 17 ANNETTE L. HAYES
 18 UNITED STATES ATTORNEY
 19

20 /s/ Norman M. Barbosa
 21 NORMAN M. BARBOSA
 22 Assistant United States Attorney

23 /s/ Seth Wilkinson
 24 SETH WILKINSON
 25 Assistant United States Attorney

26
 27 /s/ Harold Chun
 28 HAROLD CHUN
 Trial Attorney

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

/s/ Kylie Noble

KYLIE NOBLE

Legal Assistant

United States Attorney's Office

700 Stewart Street, Suite 5220

Seattle, WA 98101-3903

Telephone: (206) 553-2520

Fax: (206) 553-4440

E-mail: kylie.noble@usdoj.gov